

## **SPECIAL USE PERMIT AMENDMENT**

<b>FILE NO.</b>	<b>SPA18-059-01</b>
<b>LOCATION OF PROPERTY</b>	North side of West San Carlos Street between McEvoy Street and Dupont Street (699 West San Carlos Street)
<b>ZONING DISTRICT</b>	R-M Multiple Residence
<b>GENERAL PLAN DESIGNATION</b>	Transit Residential
<b>PROPOSED USE</b>	Special Use Permit Amendment to allow modifications to a previously approved Special Use Permit (File No. SP1-059) for the construction of a 365-unit multifamily affordable residential project. The modifications include a reduction in overall building square footage by approximately 47,182 square feet, changes in common open space, exterior elevation changes, relocation of the playground and fitness center, changes to rooftop screening, relocation of windows, and to allow the project to be constructed in two phases on an approximately 1.13-gross acre site.
<b>ENVIRONMENTAL STATUS</b>	Determination of Consistency with the Downtown Strategy 2040 Final Environmental Impact Report
<b>OWNER/APPLICANT</b>	Geoffrey Morgan First Community Housing 75 E. Santa Clara Street, Suite 1300 San Jose, CA 95113

### **FACTS AND FINDINGS**

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** The project consists of a Special Use Permit Amendment to allow the modifications to a previously approved Special Use Permit (File No. SP18-059). The previously approved Special Use Permit allowed the demolition of two industrial buildings and the removal of four trees (three ordinance-size, one non-ordinance-size) for the construction of a 100% affordable housing project with two 12-story towers consisting of up

to 365 multifamily residential apartment units. This Special Use Permit Amendment would allow a reduction in overall square footage from 344,328 square feet to 297,146 square feet, a reduction of approximately 47,182 square feet. The amendment would also allow changes in common open space, exterior elevation changes, relocation of the playground and fitness center, changes to rooftop screening, and relocation of windows. Additionally, one two-bedroom unit is now proposed as a one-bedroom unit.

The Amendment would also allow the project to be constructed in two phases. For state funding purposes, the project is being separated into two phases to reduce the overall cost of funding per application and each will achieve their own Certificate of Occupancy with separate building permits. Phase 1 includes the site work, podium, podium courtyard, and McEvoy Tower (west tower). If Phase 2 construction has not commenced prior to completion of Phase 1, a temporary roof over podium for the footprint of the Dupont Tower (east tower) is also included in Phase 1. Phase 2 would consist of the construction of the Dupont Tower (east tower).

2. **Site Description and Surrounding Uses.** The subject site is located on the north side of West San Carlos Street between McEvoy Street and Dupont Street. The approximately 1.13-gross acre site currently has two single-story industrial buildings on the site and a paved area for parking and storage. Access to the site is from two driveways along McEvoy Street. The buildings are used for metal fabrication, welding, and repair. One building is approximately 815 square feet and the other is approximately 10,565 square feet. Additionally, there are two accessory structures on site. One accessory structure is 576 square feet and the other is 1,444 square feet. The demolition of all buildings and removal of all trees was approved with the previously approved Special Use Permit (File No. SP18-059)

Land uses to the north, south, and east of the project site are industrial uses, including pipe bending and fitting, a trucking school, and a packaging business, respectively. To the west, there is a gallery, a theater and a surface parking lot.

3. **General Plan Conformance.** The subject site has a designation of Transit Residential on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram and Diridon Station Area Plan. The Transit Residential designation is the primary designation for new high-density, mixed-use residential development sites that are located in close proximity to transit, jobs, amenities, and services. This designation may also be appropriate for some sites within Urban Village areas as identified through an Urban Village Planning process. The allowable density for this designation is further defined within the Diridon Station Area Plan (DSAP).

The project site is within the boundaries of Diridon Station Area Plan (DSAP), an adopted Urban Village plan, and is therefore subject to the land use and design standards established within the plan. The Transit Residential designation is intended for transit integrated residential development and/or vertical or horizontal residential/commercial mixed-use development within walking distance of the Station and along key transportation corridors like West San Carlos Street. This designation has a density of 65-250 dwelling units per acre. All development within the Transit Residential Designation is required to be pedestrian oriented with emphasis on activating the ground level; pedestrian entries and windows should be located along the sidewalk and buildings should include architectural elements (like awnings, changes in materials, articulated building façade, etc.) that add visual interest.

The proposed project is consistent with the following General Plan policies:

Major Strategy #3 - Focused Growth: The Focused Growth Major Strategy plans for new

residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods.

Efficient Use of Residential and Mixed-Use Lands Policy LU-10.2: Distribute higher residential densities throughout the City in identified growth areas and facilitate the development of residences in mixed-use development within these growth areas.

Affordable Housing – Goal H-2: Preserve and improve San José’s existing affordable housing stock and increase its supply such that 15% or more of the new housing stock developed is affordable to low, very low and extremely low-income households.

Affordable Housing Policy H-2.2: Integrate affordable housing in identified growth locations and where other housing opportunities may exist, consistent with the Environs San José 2040 General Plan.

*Analysis: The subject site is within the Diridon Station Area Plan (DSAP), amended by City Council on May 25, 2021 (Resolution No. 80021). The project’s high density would promote urban development and would facilitate the project which encourages an active, bicycle-friendly environment consistent with the Major Strategies, goals, and policies of the General Plan. The project would increase the affordable housing stock within the City by providing a 100% affordable housing community (excluding the four market rate manager’s units). The project includes residential amenities, such as roof gardens, children’s play areas, and community rooms to provide appealing housing amenities for a wide range of demographic segments of the community. Four market rate units would be reserved for the managers and the remaining would be affordable to households that earn between 30% and 80% or lower of the Area Medium Income (AMI). With a density of 323 dwelling units per acre, this is a dense housing project concentrated in an area where there are growth opportunities for both market-rate and affordable housing.*

#### Building Height

The project is located within the boundaries of the Diridon Station Area Plan (DSAP), amended by the City Council on May 25, 2021 (Resolution No. 80021). Pursuant to the Building Heights Diagram (Figure 2-3-13) of the DSAP, the maximum allowed building height at the subject site is 285 feet.

*Analysis: The project proposes a maximum height of 164 feet. Therefore, the project conforms with the maximum allowable height pursuant to the Diridon Station Area Plan.*

4. **Zoning Code Compliance.** The subject site is located in the R-M Multiple Residence District. As previously discussed, there would be physical changes to the building including reducing the project square footage by approximately 47,182-square feet.

#### Development Standards

The project conforms to the R-M Residential Multi-Family Residential Zoning District Development Standards Zoning Section 20.30.200, except for the requested waivers in regards to height, setback and motorcycle parking. There is no change to the applicants requested height, setback, and motorcycle parking waivers as previously approved for the project in conformance with the State Density Bonus Law. As discussed above, height limits are set by the Diridon Station Area Plan.

### Parking

There would be no change in the number of residential units proposed. Therefore, there is no change in the number vehicle, bicycle, or motorcycle parking spaces required or provided. The project was previously approved with 94 vehicle parking spaces, and 94 would be provided. The project requires 92 bicycle parking spaces and 401 would be provided.

5. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties. Section 15301(c) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) exempts existing facilities.

*Analysis: Based on an analysis of the above changes documented in the Addendum to the Initial Study/Environmental Assessment for the McEvoy Affordable Housing Project, no new or more significant environmental impacts beyond those identified in the Downtown Strategy 2040 FEIR have been identified, nor have any new mitigation measures or alternatives which are considerably different from those analyzed in the Downtown Strategy 2040 FEIR been identified. The project will not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the Downtown Strategy 2040 FEIR. For these reasons, a supplemental or subsequent EIR is not required and an Addendum to the Initial Study/Environmental Assessment has been prepared for the proposed project.*

6. **Special Use Permit Amendment Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Special Use Permit Amendment, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The Special Use Permit Amendment, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and

*Analysis: As discussed above, the project is consistent with the General Plan and Diridon Station Area Plan land use designation of Transit Residential. The subject site is within the Diridon Station Area Plan (DSAP), amended by City Council on May 25, 2021. The project's high density would promote urban development and would facilitate the project which encourages an active, bicycle-friendly environment consistent with the Major Strategies, goals, and policies of the General Plan. The project with the modifications would still increase the affordable housing stock within the City by providing a 100% affordable housing community (excluding the four market rate manager's units). The project includes residential amenities, such as a rooftop garden, children's play areas, and community rooms to provide appealing housing amenities for a wide range of demographic segments of the community. Four market rate units would be reserved for the managers and the remaining would be affordable to households that earn between 30% and 80% or lower of the Area Medium Income (AMI). With a density of 323 dwelling units per acre, this is a dense housing project concentrated in an area where there are growth opportunities for both market-rate and affordable housing.*

- b. The Special Use Permit Amendment, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and



*Analysis: As discussed above, the project would alter the previously approved project's conformance with all applicable development standards and parking requirements of the Zoning Code, with the exception of the concessions and waivers that were approved with the previously approved Special Use Permit (File No. SP18-059). As discussed above, the previously approved Special Use Permit also authorized the demolition of all existing structures and the removal and replacement of trees and landscaping on site.*

- c. The Special Use Permit Amendment, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: The project installed an on-site sign describing the project and mailed notices for public hearing to property owners and tenants within a radius of 500 feet of the project site, which is consistent with the Public Outreach City Council Policy.*

- d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety, or general welfare; and

*Analysis: The project would continue to not affect the utility or value of surrounding properties in the neighborhood in a negative way, as the project would replace approximately 11,380-square feet of industrial buildings on an underdeveloped site. This project could serve as a catalyst for future development in the area and therefore could trigger more investment, improving the utility and value of surrounding properties. The increase in availability of affordable housing throughout the City would further the general welfare of the residents.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

*Analysis: The subject site is physically suitable for the project because all project component is designed within the project site. As identified above, the height is allowable pursuant to the Diridon Station Area Plan. The site is surrounded by industrial uses to the north, south, and east, and commercial uses to the west. The amendment would allow for the project to be constructed in phases, while still maintaining adequate amenities and open space. Phase 1 includes the site work, podium, podium courtyard, and McEvoy Tower (west tower). If Phase 2 construction has not commenced prior to completion of Phase 1, a temporary roof over podium for the footprint of the Dupont Tower (east tower) is also included in Phase 1. The project would provide space for a plaza to help improve pedestrian connectivity between the two sites. A 6-foot pedestrian path is also proposed along the southern edge of the property to help provide access to transit.*

- f. The proposed site is adequately served:

- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and

- ii. By other public or private service facilities as are required.

*Analysis: The subject site is well-served by West San Carlos Street, McEvoy Street, and Dupont Street, as well as by bus routes and Diridon Station. The existing streets and utilities are of sufficient capacity to serve the affordable project. All public utilities are adequate as evidenced by the issuance of the Final Public Works memo dated 1/6/20.*

*As identified above, the project is located within the DSAP and is approximately 0.38 mile from Diridon Station. Additionally, bus routes 23 and 523 run along West San Carlos Street, providing local bus services to De Anza College, downtown, Blossom Hill, and Mountain View.*

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: The project incorporates measures to address noise, stormwater runoff, drainage and erosion. The project would implement site design measures, such as creating new pervious areas, adding landscaping around walkways, sidewalks, and parking spaces, and source control measures such as use of efficient irrigation systems, covered trash and recycling containers, and providing an interior parking structure. As identified above, noise from the playground would be minimized by ensuring, as a condition of approval, that use of the playground would only occur between sunrise and sunset, helping to ensure the minimization of noise in the evening hours.*

In accordance with the findings set forth above, a Special Use Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to be constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the Director of Planning, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in

accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Use Authorization.** This Special Use Permit Amendment allows modifications to a previously approved Special Use Permit (File No. SP18-059) including a reduction in overall square footage by approximately 47,182 square feet, changes in common open space, exterior elevation changes, relocation of the playground and fitness center, changes to rooftop screening, relocation of windows, the conversion of one two-bedroom unit to a one-bedroom unit, and to allow the project to be constructed in two phases on an approximately 1.13-gross acre site.
6. **Project Phasing**
  - a. The project is permitted to be constructed in two phases as shown on the approved plan set, titled "McEvoy Dupont Apartments", dated April 6<sup>th</sup>, 2022.
  - b. The applicant shall provide all open space shown in the drawings, titled "McEvoy Dupont Apartments", dated April 6<sup>th</sup>, 2022 within Phase 1 in addition to the courtyard space between the towers at Level 2, totaling approximately 40,281 square feet.
  - c. Should Phase 2 not begin construction within 4 years of the start of Phase 1 construction, the applicant will be required to submit a Major Permit Adjustment to provide an

additional 10,500 square feet of common open space to the satisfaction of the Director of Planning, Building, and Code Enforcement.

7. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved plans entitled, “McEvoy Dupont Apartments” dated April 6<sup>th</sup>, 2022, on file with the Department of Planning, Building and Code Enforcement (“Approved Plans”), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
8. **Conformance to Other Permits.** Unless specifically modified with this Permit, this project shall conform to all of the requirements of previously approved Special Use Permit (File No. SP18-059).
9. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. 79406.
10. **Permit Adjustment Required.** Prior to the issuance of a Building Permit, the permittee must obtain a Permit Adjustment for a back-up generator. A back-up generator must meet the following requirements:
  - a. Be enclosed within the building
  - b. Be consistent with the Municipal Code Section 20.80.2030
  - c. Operation of a temporary stand-by or backup power generation facility, by definition, shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period.
  - d. Testing of generators is limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
11. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
12. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
13. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **Revocation, Suspension, Modification.** This Special Use Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:



- a. A violation of any conditions of the Special Use Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **4<sup>th</sup> of May, 2022.**

CHRISTOPHER BURTON, Director  
Planning, Building, and Code Enforcement

Deputy  
Sylvia Do